



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1997

Ms. Joni M. Vollman
Assistant General Counsel
Office of the Harris County District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR97-2834

Dear Ms. Vollman:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Texas Open Records Act. Your request was assigned ID# 111199.

The Office of the Harris County District Attorney (the "district attorney") received a request for four district attorney's files pertaining to two named individuals. You submitted to this office for review the records at issue, or a representative sample thereof.¹ You state that the district attorney has released "certain documents" to the requestor, but contend the remaining requested information is excepted from public disclosure pursuant to sections 552.101 and 552.108(a)(3) of the Government Code.

You first contend that the documents you submitted to this office as Exhibit A constitute "work product" that is excepted from public disclosure pursuant to section 552.108(a)(3). Section 552.108(a)(3) provides that information is excepted from public disclosure under the Open Records Act if it is information that is either (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) if it is information that reflects the mental impressions or legal reasoning of an attorney representing the state. You describe the contents of Exhibit A as consisting of handwritten and typed notes of prosecutors and their investigators, the central intake field

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

report, DIMS report², the cover folders of the prosecutor's files, the Capital Murder report, and the Harris County District Attorney Research Information Sheet. Assuming these documents were either created by an attorney representing the state, or by an individual working at the direction of such an attorney, we agree that most of the documents contained in Exhibit A may be withheld pursuant to section 552.108(a)(3)(A) or 552.108(a)(3)(B), respectively.

The central intake field reports, however, consist primarily of the types of "basic information about an arrested person, an arrest, or a crime" that is not protected from public disclosure under this section. Gov't Code § 552.108(c). Because you have not explained or otherwise demonstrated that the district attorney has released the "basic information" about three of the offenses to the requestor, the district attorney may withhold only the central intake report pertaining to the offense report submitted as Exhibit F. *See discussion infra*. The remaining central intake reports must be released to the extent that they contain "basic information" about the respective offenses in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The remaining information in the "central intake field report" may be withheld pursuant to section 552.108(a)(3)(A).

You contend the documents you submitted to this office as Exhibits B through G are excepted from public disclosure pursuant to section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Exhibit B consists of criminal history record information. We agree that the district attorney must withhold pursuant to statutory law all criminal history information obtained from the TCIC and NCIC. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The district attorney therefore must withhold any criminal history information obtained from the TCIC and NCIC pursuant to section 552.101 of the Government Code.

You next contend that certain reports prepared by the district attorney for the Texas Board of Pardons and Paroles are confidential pursuant to section 18(a) of article 42.18 of the Code of Criminal Procedure. Section 18(a) provides:

²This office could not identify any document in Exhibit A as a "DIMS report."

Except as provided by Subsection (b), all information, including victim protest letters or other correspondence, victim impact statements, lists of inmates eligible for release on parole, and arrest records of inmates, obtained and maintained in connection with inmates of the institutional division subject to parole, release to mandatory supervision, or executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the pardons and paroles division, or persons directly identified in any proposed plan of release for a prisoner, is confidential and privileged.

This provision accords confidentiality to the records of the Board of Pardons and Paroles. Open Records Decision No. 190 (1978) at 2; *see also* Attorney General Opinion H-427 (1974); Open Records Decision No. 33 (1974). It does not, however, make confidential records in the custody of the district attorney. Because you have raised no other exception to required public disclosure with regard to these documents, they must be disclosed.

Exhibit D consists of the medical records of a rape victim. The release of medical records is governed by section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), which provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 (1990) at 7. The medical records contained in Exhibit D may be released only in accordance with these provisions of the MPA. Open Records Decision No. 598 (1991).

You contend that Exhibit E, which consists of jury questionnaires, is made confidential by article 35.29 of the Code of Criminal Procedure. Article 35.29 provides as follows:

Information collected by the court or by a prosecuting attorney during the jury selection process *about a person who serves as a juror*,

including the juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court *in which the person is serving or did serve as a juror*. On a showing of good cause, the court shall permit disclosure of the information sought. [Emphasis added].

Article 35.29 makes confidential certain personal information pertaining to only those individuals who actually served on the petit jury in a criminal trial. We have marked the categories of information the district attorney must withhold in compliance with the language and intent of the statute. The district attorney may not withhold any additional information contained in Exhibit E pursuant to article 35.29. On the other hand, we have identified and marked one portion of one of the questionnaires that the district attorney must withhold pursuant to common-law privacy. *See generally Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

You seek to withhold an offense report and a sexual assault victim's written statement detailing the sexual assault pursuant to common-law privacy. Section 552.101 of the Government Code also protects information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

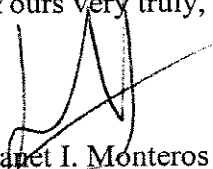
Clearly, information pertaining to an incident of sexual assault raises an issue of common-law privacy. Open Records Decision No. 339 (1982). In Open Records Decision No. 339 (1982), this office concluded that "a detailed description of an incident of aggravated sexual abuse raises an issue of common law privacy" and therefore any information tending to identify the assault victim should be withheld pursuant to common-law privacy. *See also* Open Records Decision No. 393 (1983).

We have marked a representative sample of the information in Exhibit F that implicates the privacy interests of the rape victim. It is not clear to this office, however, whether this information has been revealed in open court or in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information contained in public court records not protected by common-law privacy). *See also Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995). Consequently, the district attorney must withhold the types of information we have marked only to the extent that the information has not otherwise become public. Because you have raised no other exception to disclosure with regard to Exhibit F, all remaining portions of the victim's statement and the offense report must be released.

Finally, you contend that Exhibit G, the records of a Houston Police Department internal affairs investigation, is confidential pursuant to section 143.1214 of the Local Government Code. Section 143.1214(b) provides that a police department must maintain an internal file with documents concerning misconduct allegations against police officers when the department did not sustain those allegations. Section 143.1214(b) also provides that such information may not be released "to any agency or other person except another law enforcement agency or fire department." In this instance, the allegations against the police officer under investigation were not sustained. Accordingly, the district attorney must withhold Exhibit G in its entirety pursuant to section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/RWP/glg

Ref: ID# 111199

Enclosures: Submitted documents

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(w/o enclosures)